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Aug 4 1976  
Date  
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ICC Washington, D. C.

RECORDATION NO. 8385-2 Filed & Recorded

AUG 4 1976-1 20 PM

INTERSTATE COMMERCE COMMISSION

The Honorable Robert L. Oswald  
Secretary  
Interstate Commerce Commission  
Washington, D. C. 20423

RECORDATION NO. 8385-A Filed & Recorded

AUG 4 1976-1 20 PM

INTERSTATE COMMERCE COMMISSION

My dear Mr. Oswald:

Enclosed for filing with the Interstate Commerce Commission are 15 executed Counterparts of the following documents, (10 Counterparts of document 2).

1. Amendment and Restatement of Conditional Sale Agreement dated as of July 30, 1976 to the Conditional Sale Agreement dated as of June 22, 1976, between FMC CORPORATION, a Delaware corporation ("Builder"), 200 East Randolph Drive, Chicago, Illinois 60601, and FIRST SECURITY BANK OF UTAH, N.A., 79 South Main Street, Salt Lake City, Utah 84110, a national banking association, not in its individual capacity but acting solely as trustee under a Trust Agreement dated as of June 22, 1976 with FMC Finance Corporation, 200 East Randolph Drive, Chicago, Illinois 60601.

2. Lease of Railroad Equipment dated as of June 22, 1976 between SSI RAIL CORP., a Delaware corporation, Two Embarcadero Center, San Francisco, California 94111 ("Lessee") and FIRST SECURITY BANK OF UTAH, N.A. ("Lessor").



RECORDATION NO. 8385-B Filed & Recorded

AUG 4 1976-1 20 PM

INTERSTATE COMMERCE COMMISSION

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I.C.C.  
FEE OPERATION BR.

August 3, 1976

RECORDATION NO. 8385-A Filed & Recorded

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INTERSTATE COMMERCE COMMISSION

The Honorable Robert L. Oswald  
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August 3, 1976

3. Agreement and Assignment dated as of July 30, 1976 between Builder, and MANUFACTURERS HANOVER TRUST COMPANY, a New York banking corporation, 350 Park Avenue, New York, New York 10022 ("Assignee").

4. Assignment of Lease and Guaranty dated as of July 30, 1976 by Lessor to Assignee.

The above documents cover the following railroad equipment with the A.A.R. mechanical designation of "XM."

- 100 70-ton boxcars built by FMC Corporation and numbered APA 1850 through 1949 inclusive.
- 100 100-ton box cars built by FMC Corporation and numbered APA 1700 through 1799 inclusive.

Each boxcar is plainly, distinctly, permanently and conspicuously marked on each side in letters not less than one inch in height as follows: Owned by a Company under a Security Agreement filed under the Interstate Commerce Act, Section 20."

The obligations of Lessee under the Lease of Railroad Agreement are guaranteed by ITEL Corporation, One Embarcadero Center, San Francisco, California 94111, the parent company of Lessee.

Also enclosed is my personal check in the sum of \$80.00 payable to the Interstate Commerce Commission being the prescribed fee for filing and recording the foregoing document.

Please return all additional copies of the enclosed counterparts not required by the Interstate

The Honorable Robert L. Oswald  
Page 3  
August 3, 1976

Commerce Commission to Allen H. Harrison, Jr. of Wilmer  
Cutler & Pickering, who will be delivering this letter  
on our behalf.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Martin D. Goodman', with a stylized flourish extending to the right.

Martin D. Goodman  
Secretary

MDG:bsk  
Enclosures

RECORDATION NO. 8385-C Filed & Recorded

AUG 1 1976 1 02 PM

AGREEMENT AND ASSIGNMENT

AGREEMENT AND ASSIGNMENT dated as of July 30, 1976 between FMC CORPORATION, a Delaware corporation (hereinafter called the "Builder"), and MANUFACTURERS HANOVER TRUST COMPANY, a New York banking corporation (hereinafter called the "Assignee").

WHEREAS, the Builder and First Security Bank of Utah, N.A., a national banking association, not in its individual capacity but acting solely as trustee under a Trust Agreement dated as of June 22, 1976 (hereinafter called the "Trust Agreement") with FMC Finance Corporation (said bank, so acting, being hereinafter called the "Vendee"), have entered into a Conditional Sale Agreement dated as of June 22, 1976, as amended and restated as of the date hereof (said Agreement, as so amended and restated, being hereinafter called the "Conditional Sale Agreement"), providing for the construction, sale and delivery by the Builder, on the conditions set forth therein, and the purchase by the Vendee of the railroad boxcars described in Schedule A to the Conditional Sale Agreement (said boxcars being hereinafter called the "Equipment"); and

WHEREAS, the Vendee and SSI Rail Corp., a Delaware corporation (hereinafter called the "Lessee"), have entered into a Lease of Railroad Equipment dated as of June 22, 1976 (hereinafter called the "Lease"), providing for the leasing of the Equipment by the Vendee to the Lessee;

NOW THEREFORE, this Agreement and Assignment (hereinafter called this Assignment) witnesseth: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as in consideration of the mutual covenants contained herein, the parties hereto hereby agree as follows:

1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) All the right, security title and interest of the Builder in and to each unit of the Equipment;

(b) All the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payment specified in subparagraph (a) of the first paragraph of Article 3 thereof), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Builder under the Conditional Sale Agreement and in and to all interest payable thereon; and

(c) Except as limited by the foregoing subparagraph (b), all of the Builder's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Builder for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Assignee to, or transfer, pass or in any way affect or modify, the Builder's obligation to deliver the Equipment in accordance with the Conditional Sale Agreement or Builder's obligations with respect to its warranties, covenants and agreements contained therein or relieve the Vendee from its obligations to the Builder thereunder, it being understood and agreed that, notwithstanding this Assignment or any subsequent assignment by Assignee of its rights under this Assignment and the Conditional Sale Agreement, such obligations of the Builder to the Vendee shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee, in the Assignee's own name, in the name of the Assignee's nominee or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect and receive any and all sums to which the Assignee is or may become entitled under this Assignment and to enforce compliance by the Vendee with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

2. The Builder represents, covenants and agrees that it has constructed for and delivered to the Vendee each unit of the Equipment, in accordance with the provisions of the Conditional Sale Agreement, and that, notwithstanding this Assignment, it will perform and fully comply with each and all

of the warranties, covenants and conditions of the Conditional Sale Agreement to be performed and complied with by the Builder. The Builder warrants to the Assignee and the Vendee that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement, Builder had good and marketable title to such unit and good and lawful right to sell the same and that such title was free from all claims, liens, security interests and other encumbrances whatsoever, except for the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease, and the Builder further covenants and agrees that it will defend such title against the demands of all persons whomsoever based on claims originating prior to or at the time of delivery of the Equipment by the Builder to the Vendee pursuant to the Conditional Sale Agreement. The Builder further warrants to the Assignee that on the Closing Date the Builder will have good and valid security title to all of the Equipment, free from all claims, liens, security interests and other encumbrances whatsoever, except for the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease, and the Builder covenants and agrees that it will defend such title against the demands of all persons whomsoever based on claims originating prior to the Closing Date.

The Builder covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any sums due thereunder or to enforce any provision thereof, the Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever claimed by the Vendee arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof or by reason of any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee by the Builder or by reason of any act or omission on the part of the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee against, and only against, the Builder.

The Builder agrees that any amounts payable to it by the Vendee or the Lessee, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest on any of the units of the Equipment or on the Vendee's rights under the Lease.

3. Subject to the terms and conditions of this Assignment, the Assignee will, on the Closing Date (as defined in the Conditional Sale Agreement), pay to the Builder an

amount equal to the portion of the Total Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment which, under the terms of subparagraph (c) of the first paragraph of Article 3 of the Conditional Sale Agreement, is payable in installments.

The obligation of the Assignee to make the payment provided for in the preceding paragraph shall be subject to the conditions precedent that the Assignee shall have received the original fully executed counterpart of the Lease and the following other documents, which shall be in form and substance satisfactory to the Assignee and its counsel:

(a) A bill of sale from the Builder to the Assignee transferring to the Assignee security title to the Equipment, warranting to the Assignee and to the Vendee that, at the time of delivery of the Equipment under the Conditional Sale Agreement, the Builder had good and marketable title to each unit of the Equipment and good and lawful right to sell the same and that such title was free from all claims, liens, security interests and encumbrances whatsoever, except for the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease, and covenanting to defend such title against the demands of all persons whomsoever based on claims originating prior to delivery of the Equipment by the Builder to the Vendee pursuant to the Conditional Sale Agreement;

(b) A Certificate or Certificates of Acceptance with respect to all of the Equipment as contemplated by Article 2 of the Conditional Sale Agreement and Section 2 of the Lease;

(c) A certificate of an officer of the Lessee to the effect that none of the units of the Equipment was placed in the service of the Lessee or otherwise used by the Lessee prior to delivery of such units under the Conditional Sale Agreement;

(d) An invoice of the Builder, addressed to the Assignee, covering all of the units of the Equipment, accompanied by or having endorsed thereon a certification of the Lessee as to the correctness of the prices of such units as set forth in said invoice;

(e) A Guaranty Agreement in substantially the form of Annex A hereto (the "Guaranty Agreement"), duly executed and delivered by Itel Corporation ("Itel");

(f) An Assignment of Lease and Guaranty in substantially the form of Annex B hereto (the "Assignment of Lease and Guaranty"), duly executed and delivered by the Vendee and consented to by the Lessee and Itel;

(g) An Assignment of Sublease in substantially the form of Annex C hereto (the "Assignment of Sublease"), duly executed and delivered by the Lessee and consented to by The Apache Railway Co. ("Apache"), together with an assignment thereof in substantially the form of Annex D hereto (the "Subsequent Assignment of Sublease"), duly executed and delivered by the Vendee and consented to by the Lessee and Apache;

(h) An opinion of counsel for the Vendee, addressed to the Assignee and dated the Closing Date, to the effect that (i) First Security Bank of Utah, N.A. is a duly organized and existing national banking association in good standing under the laws of the United States of America; (ii) the Trust Agreement has been duly authorized, executed and delivered by First Security Bank of Utah, N.A., and is a valid and binding instrument enforceable against said Bank in accordance with its terms, and the trust created by the Trust Agreement is a duly created and validly existing trust under the laws of the State of Utah; (iii) the Conditional Sale Agreement, the Lease, the Assignment of Lease and Guaranty and the Subsequent Assignment of Sublease have been duly authorized, executed and delivered by the Vendee and are valid and binding instruments enforceable against the Vendee in accordance with their respective terms; (iv) the entering into and performance of the Trust Agreement, the Conditional Sale Agreement, the Lease, the Assignment of Lease and Guaranty and the Subsequent Assignment of Sublease will not contravene any provision of law (including the usury law of the State of Utah), or of the charter or by-laws of First Security Bank of Utah, N.A., or of any agreement or instrument binding upon such bank or the Vendee of which such counsel has knowledge; and (v) no approval of, or filing with, any governmental authority is necessary for the valid execution and delivery or the performance of the Trust Agreement by First Security Bank of Utah, N.A. or of the Conditional Sale Agreement, the Lease, the Assignment of Lease and Guaranty and the Subsequent Assignment of Sublease by the Vendee;

(i) An opinion of counsel for the Builder, addressed to the Assignee and dated the Closing Date, to the effect that (i) the Builder is a



duly organized and existing corporation in good standing under the laws of the State of Delaware, is duly qualified to do business in each jurisdiction where such qualification is necessary to carry out the transactions contemplated by the Conditional Sale Agreement and this Assignment, and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement and this Assignment have been duly authorized, executed and delivered by the Builder and are valid and binding instruments enforceable against the Builder in accordance with their respective terms; (iii) no consent or approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution, delivery and performance by the Builder of the Conditional Sale Agreement or this Assignment; (iv) the Assignee is vested with all of the rights, titles, interests, powers and privileges of the Builder purported to be assigned to it by this Assignment; (v) at the time of delivery thereof under the Conditional Sale Agreement, the Equipment was free from all claims, liens, security interests and encumbrances whatsoever, except for the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease; and (vi) security title to the Equipment is validly vested in the Assignee, free from all claims, liens, security interests and encumbrances whatsoever, except for the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease;

(j) An opinion of counsel for the Lessee and Itel, addressed to the Assignee and dated the Closing Date, to the effect that (i) the Lessee and Itel are duly organized and existing corporations in good standing under the laws of the State of Delaware, are duly qualified to do business in each jurisdiction where such qualification is necessary to carry out the transactions contemplated by this Assignment, the Conditional Sale Agreement and the Lease, and have the power and authority to own their properties and to carry on their business as now conducted; (ii) the Lease, the Assignment of Sublease, the Lessee's consent to the Assignment of Lease and Guaranty and the Lessee's consent to the Subsequent Assignment of Sublease have been duly authorized, executed and delivered by the Lessee and are valid and binding instruments enforceable against the Lessee in accordance with their respective terms, (iii) the Guaranty Agreement and Itel's consent to the Assignment of Lease and Guaranty have been duly authorized, executed and delivered by Itel and are valid and binding instruments enforceable

against Itel in accordance with their respective terms; (iv) no consent or approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution, delivery and performance by the parties thereto of the Conditional Sale Agreement, this Assignment, the Lease, the Guaranty Agreement, the Assignment of Lease and Guaranty, the Assignment of Sublease or the Subsequent Assignment of Sublease; (v) the Conditional Sale Agreement, this Assignment, the Lease and the Assignment of Lease and Guaranty have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, and a Uniform Commercial Code financing statement with respect to the Assignment of Lease and Guaranty has been duly filed with the Secretary of State of Utah, and no other filing or recordation is necessary to protect in the United States the right, title and interest of the Assignee in and to the Equipment and in and to the Vendee's right, title and interest in and to the Lease and the Guaranty Agreement; (vi) the Assignee has a valid perfected first security title to the Equipment, free and clear of all claims, liens, security interests and other encumbrances, except for the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease; (vii) the Assignee has a valid perfected first security interest in the Vendee's right, title and interest in and to the Lease and the Guaranty Agreement, free and clear of all claims, liens, security interests and other encumbrances; and (viii) the entering into and performance of the Lease and the Assignment of Sublease by the Lessee and the Guaranty Agreement by Itel will not contravene any provision of law, or of the charter or by-laws of the Lessee or Itel, or of any agreement or other instrument binding upon the Lessee or Itel of which such counsel has knowledge.

(k) A receipt evidencing the payment to the Builder on the Closing Date of that portion of the Total Purchase Price of the Equipment payable under subparagraph (a) of the first paragraph of Article 3 of the Conditional Sale Agreement; and

(l) Certified or other copies of all documents that Assignee may reasonably request in

connection with the transactions contemplated by the Trust Agreement, the Conditional Sale Agreement, this Assignment, the Lease, the Guaranty Agreement, the Assignment of Lease and Guaranty, the Assignment of Sublease, the Subsequent Assignment of Sublease and of all corporate proceedings taken in connection therewith by the respective parties to the aforesaid instruments.

In giving the opinions specified in the foregoing subparagraphs (h), (i) and (j), counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in the foregoing subparagraph (j), counsel may rely, as to the title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement, upon the opinion of counsel for the Builder.

The Assignee shall not be obligated to make payment hereunder at any time while a Default (as defined in the Conditional Sale Agreement), or an event which with notice or lapse of time or both would constitute a Default, shall be in existence. In the event that the Assignee shall not make such payment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, security title and interest of the Assignee in and to the Equipment.

4. The Assignee may assign its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any such assignment, each subsequent assignee shall, to the extent of such assignment, enjoy all of the rights and privileges and be subject to all of the obligations of the Assignee hereunder.

5. The Builder (a) represents and warrants to the Assignee, its successors and assigns that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the Vendee) it is a valid and existing agreement, binding upon the Builder and the Vendee in accordance with its terms, and that it is now in full force and effect without amendment; and (b) covenants and agrees that it will from time to time and at any time, at the request of the Assignee or its successors or assigns, make, execute and deliver all such

further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary or appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, security titles and interests hereby assigned and transferred to the Assignee or intended so to be.

It is understood and agreed that the security title in each unit of the Equipment hereby assigned and transferred to the Assignee is subject to the rights of the Lessee as lessee under the Lease.

6. This Assignment and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and any rights arising out of the marking of the units of the Equipment as provided in Article 6 of the Conditional Sale Agreement.

7. This Assignment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

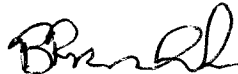
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective corporate names, by officers duly elected and authorized, and their respective corporate seals to be affixed and duly attested, all as of the day, month and year first above written.

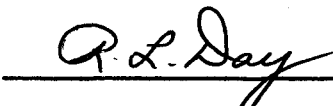
FMC CORPORATION

[Corporate Seal]

Attest:

By





ASSISTANT SECRETARY

MANUFACTURERS HANOVER TRUST COMPANY

[Corporate Seal]

Attest:

By

\_\_\_\_\_

STATE OF ILLINOIS) ss.:  
COUNTY OF COOK )

On this 2nd day of August, 1976, before me personally appeared B. R. VAN ECK, to me personally known, who, being by me duly sworn, says that he is a

VICE PRESIDENT of FMC Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Karen Nelson  
Notary Public

[Notarial Seal]

My Commission expires:

further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary or appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, security titles and interests hereby assigned and transferred to the Assignee or intended so to be.

It is understood and agreed that the security title in each unit of the Equipment hereby assigned and transferred to the Assignee is subject to the rights of the Lessee as lessee under the Lease.

6. This Assignment and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and any rights arising out of the marking of the units of the Equipment as provided in Article 6 of the Conditional Sale Agreement.

7. This Assignment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective corporate names, by officers duly elected and authorized, and their respective corporate seals to be affixed and duly attested, all as of the day, month and year first above written.

FMC CORPORATION

[Corporate Seal]

Attest:

By \_\_\_\_\_

\_\_\_\_\_

MANUFACTURERS HANOVER TRUST COMPANY

[Corporate Seal]

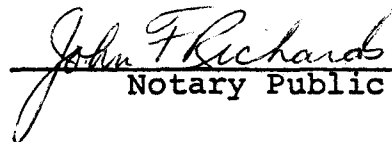
Attest:

By Nancy B. Nieman  
Asst. Vice President

Jean L. Brown  
Asst. Secretary

STATE OF NEW YORK     )  
                                      :   SS.:  
COUNTY OF NEW YORK    )

On this 30<sup>th</sup> day of August, 1976, before me personally appeared Nancy B. Nieman, to me personally known, who, being by me duly sworn, says that she is a Asst. Vice President of MANUFACTURERS HANOVER TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
Notary Public

[Notarial Seal]

My Commission expires:

JOHN F. RICHARDS  
Notary Public, State of New York  
No. 43-4502837  
Qualified in Richmond County  
Commission Expires March 30, 1977.

GUARANTY AGREEMENT

June 22, 1976

To: First Security Bank of Utah, N.A.,  
not in its individual capacity  
but acting solely as trustee  
under a Trust Agreement dated  
as of June 22, 1976 with FMC  
Finance Corporation.

Dear Sirs:

You have agreed to purchase 200 boxcars (the "Equipment") from FMC Corporation, and to lease the Equipment to SSI Rail Corp. pursuant to a Lease of Railroad Equipment dated as of June 22, 1976 (the "Lease") between you (hereinafter sometimes called "Lessor") and SSI Rail Corp. (hereinafter sometimes called "Lessee"), on the condition that the undersigned, Itel Corporation ("Itel"), execute and deliver to you this Agreement.

Accordingly, for and in consideration of your acquiring the Equipment and entering into the Lease and for other good and valuable consideration, Itel hereby agrees with you as follows:

1. Upon the failure of Lessee to make payment, as and when due, of any sum of money payable by Lessee under or pursuant to the Lease, whether such sum shall be payable as rent, Casualty Value, indemnity, interest or otherwise (all sums payable by Lessee under or pursuant to the Lease being hereinafter collectively called the "Lease Obligations", and any portion thereof that may at any time be due and unpaid by Lessee being hereinafter called "Defaulted Lease Obligations"), Lessor may make a written demand upon Itel to perform hereunder.

2. Itel hereby irrevocably and unconditionally agrees, upon receipt of the written demand referred to in paragraph 1 hereof, to pay to Lessor all Defaulted Lease Obligations at the times and in the manner specified in the Lease, whether or not Lessor has exercised its option to accelerate the Lease Obligations pursuant to the terms of the Lease and without giving effect to any such acceleration.



3. Itel's obligation to make the payments as provided in paragraph 2 hereof shall continue so long as and to the extent that Lessee shall not pay when due all Lease Obligations, and Itel's obligation as provided in paragraph 2 hereof shall be suspended over any period of time during which and to the extent that all Lease Obligations are being timely paid by and on behalf of Lessee, each such suspension to begin in the calendar month during which Lessee shall pay all Lease Obligations then due.

4. All payments made to Lessor by Itel hereunder shall, pro tanto, discharge Lessee of its obligation to pay the Lease Obligations so paid by Itel.

5. Nothing in this Agreement shall be deemed or construed to impair, alter or modify any right or remedy that Lessor may have against Lessee under the Lease or otherwise, including Lessor's right to accelerate the Lease Obligations.

6. Itel's obligation hereunder is independent of the obligations of Lessee under the Lease, and a separate action or actions may be brought and prosecuted against Itel whether or not any action is brought against Lessee and whether or not Lessee is joined in any such action or actions, and Itel hereby waives the benefit of any statute of limitations affecting its liability hereunder or the enforcement thereof.

7. Itel authorizes Lessor, without notice or demand and without affecting Itel's liability hereunder, from time to time (a) to renew, compromise, extend, accelerate or otherwise change the time for payment of any of the Lease Obligations, or otherwise to change any of the provisions of the Lease; (b) to take and hold security for the payment of the Lease Obligations or of Itel's obligations under this Agreement, and to exchange, enforce, waive and release any such security; and (c) to direct the order or manner of sale of any such security as Lessor in its discretion may determine.

8. Itel hereby waives any right it may have to require Lessor (a) to proceed against Lessee, (b) to proceed against or exhaust any security held by it from Lessee, or (c) to pursue any other remedy in Lessor's power whatsoever. Until all of the Lease Obligations shall have been paid in full, Itel shall have no right of subrogation, and Itel waives any right to enforce any remedy that Lessor now has or may hereafter have against

Lessee and also waives any benefit of, and any right to participate in, any security now or hereafter held by Lessor. Itel waives all presentments, demands for performance, notices of non-performance, protests, notices of protest, notices of dishonor and notices of acceptance of this Agreement.

9. Until all Lease Obligations shall have been paid in full and the Lease shall have been terminated, Itel shall deliver to Lessor, in form and detail satisfactory to Lessor and in such number of copies as it may request:

(a) As soon as available, but not later than sixty (60) days after the close of each of the first three (3) quarters of each fiscal year of Itel, a consolidating balance sheet for Itel and its principal operating groups as of the close of such quarter, and consolidating statements of income, stockholders' equity and changes in financial position for Itel and its principal operating groups for such quarter and for the portion of the fiscal year ending with such quarter, certified as correct by a responsible officer of Itel.

(b) As soon as available, but not later than one hundred twenty (120) days after the close of each fiscal year of Itel, a consolidating balance sheet for Itel and its principal operating groups as of the close of such year, and consolidating statements of income, stockholders' equity and changes in financial position for Itel and its principal operating groups for such year. Such statements shall be accompanied by an opinion of a firm of certified public accountants, selected by Itel and satisfactory to Lessor, to the effect that such financial statements have been prepared in accordance with generally accepted accounting principles and fairly present the condition of Itel and its subsidiaries at the date thereof.

10. Until all of the Lease Obligations shall have been paid in full and the Lease shall have been terminated, Itel shall maintain direct or indirect ownership of one hundred percent (100%) of Lessee's issued and outstanding capital stock and shall keep itself informed with respect to and apprised of the operations and financial

condition of Lessee. Itel shall not create, permit or suffer to exist any lien on such capital stock.

11. In the event that Itel shall fail to make any payment required to be made by it under the provisions of paragraphs 2 and 3 hereof, Lessor may, at its option, require Itel to pay to Lessor, without further notice or demand of any kind, all of the Lease Obligations then due and payable by Lessee.

12. Itel shall pay to Lessor, on demand, all costs, including attorneys' fees, that Lessor may incur in the enforcement of this Agreement.

13. Itel understands that Lessor intends to assign all of its right, title and interest in and to the Lease and this Agreement to Manufacturers Hanover Trust Company (hereinafter called "Bank"), as collateral security for indebtedness owing by Lessor to Bank in connection with the financing of Lessor's purchase of the Equipment. Itel agrees that, upon the making of such assignment and so long as it shall be in effect, the Bank shall have all of the rights and benefits of Lessor hereunder, including (without limitation) the right to receive all payments and to give all notices and demands as herein provided, and all references herein to "Lessor" shall be deemed to mean the Bank.

14. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. This Agreement shall be binding upon Itel and its successors and assigns, and shall inure to the benefit of Lessor and its successors and assigns.

IN WITNESS WHEREOF, this Agreement has been duly executed by Itel Corporation as of the 22nd day of June, 1976.

ITEL CORPORATION

By \_\_\_\_\_  
Treasurer

ASSIGNMENT OF LEASE AND GUARANTY

ASSIGNMENT dated as of July 30, 1976 by FIRST SECURITY BANK OF UTAH, N.A., a national banking association, not in its individual capacity but acting solely as trustee under a Trust Agreement dated as of June 22, 1976 with FMC Finance Corporation (said bank, so acting, being hereinafter called "Assignor" and FMC Finance Corporation being hereinafter called "Beneficiary"), to MANUFACTURERS HANOVER TRUST COMPANY, a New York banking corporation (hereinafter called "Assignee").

W I T N E S S E T H:

WHEREAS, FMC Corporation (hereinafter called "Builder") and Assignor have entered into a Conditional Sale Agreement dated as of June 22, 1976, as amended and restated as of the date hereof (said Agreement, as so amended and restated, being hereinafter called the "Conditional Sale Agreement"), providing for the construction, sale and delivery by Builder to Assignor and the purchase by Assignor from Builder of 200 railroad boxcars (hereinafter called the "Equipment"); and

WHEREAS, Assignor and SSI Rail Corp. (hereinafter called "Lessee") have entered into a Lease of Railroad Equipment dated as of June 22, 1976, providing for the lease of the Equipment by Assignor to Lessee; and Itel Corporation ("Itel"), the owner of all of the outstanding capital stock of Lessee, has entered into a Guaranty Agreement dated as of June 22, 1976, providing for the payment by Itel to Assignor of all sums of money payable by Lessee under said Lease of Railroad Equipment which are not paid when due; and

WHEREAS, Builder and Assignee are entering into an Agreement and Assignment of even date herewith (hereinafter called the "Agreement and Assignment"), providing for the assignment by Builder to Assignee of certain of the rights of Builder under the Conditional Sale Agreement; and

WHEREAS, Assignee's obligation to execute and deliver the Agreement and Assignment and to pay Builder the consideration therefor is conditioned upon, among other things, the execution and delivery by Assignor of this Assignment;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, Assignor does hereby sell, assign, transfer and set over to Assignee and its successors and assigns all the right, title and interest of Assignor in, to and under, and does hereby grant to Assignee and its successors and assigns a security interest in:

(a) the Lease of Railroad Equipment dated as of June 22, 1976 between Assignor and Lessee (hereinafter called the "Lease"), and all rents, issues, profits and proceeds thereof (except for the payment provided for in the last sentence of the first paragraph of Section 3 of the Lease), including, without limitation, (i) except as aforesaid, all moneys due and to become due to Assignor under or in connection with the Lease, whether as rent, Casualty Value, indemnities, liquidated damages, interest, claims for damages or otherwise, (ii) all rights and powers of Assignor under the Lease to exercise any option, to consent or make any waiver or agreement or to take any other action, and (iii) all rights and claims of Assignor to insurance proceeds with respect to the Equipment leased under the Lease; and

(b) the Guaranty Agreement dated as of June 22, 1976 by Itel in favor of Assignor (hereinafter called the "Guaranty"), and all proceeds thereof (except for any amount payable thereunder in connection with the guaranty of the payment provided for in the last sentence of the first paragraph of Section 3 of the Lease), including, without limitation, (i) except as aforesaid, all moneys due and to become due to Assignor under or in connection with the Guaranty, whether as payments thereunder, claims for damages or otherwise, and (ii) all rights and powers of Assignor under the Guaranty to exercise any option, to consent or make any waiver or agreement or to take any other action.

1. This Assignment is given as collateral security for the payment by Assignor to Assignee of the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) together with interest thereon and all other amounts payable by Assignor under the Conditional Sale Agreement and the performance of all of Assignor's obligations contained therein (all of such Indebtedness, interest, other amounts and obligations being herein collectively called the "Obligations").

2. Assignor hereby irrevocably authorizes and directs Lessee and Itel to pay all rent and all other amounts due or to become due under or in connection with the Lease or

the Guaranty directly to Assignee at its office at 350 Park Avenue, New York, New York or to such other person or at such other address as Assignee may from time to time designate in writing. If Assignor shall receive any payments under or in connection with the Lease or the Guaranty or otherwise assigned hereunder, such payments shall be held by Assignor in trust for Assignee, shall be segregated from other funds of Assignor and shall, forthwith upon receipt by Assignor, be turned over to Assignee or its agent in the same form as received by Assignor (except for the endorsement of Assignor when required).

3. All moneys received by Assignee by reason of this Assignment (whether from Lessee, Itel, Assignor or otherwise) shall be held by Assignee and applied to the payment of the Obligations as and when they become due and payable, whether by maturity, prepayment, acceleration or otherwise; provided, however, that so long as no Default under the Conditional Sale Agreement, or event which with notice or lapse of time or both would constitute such a Default, has occurred and is continuing, any moneys so received by Assignee in excess of the amount of the Obligations then due shall be paid over to Assignor, free of this Assignment, not later than one business day after receipt thereof by Assignee, by transfer of funds immediately available to Beneficiary. Upon the occurrence of a Default under the Conditional Sale Agreement, Assignee shall have all of the rights and remedies of a secured party under the Uniform Commercial Code of the State of New York.

4. Assignor hereby represents and warrants to Assignee that (i) the Lease is in full force and effect and enforceable against Lessee in accordance with its terms, and neither Assignor nor Lessee is in default thereunder; (ii) the Guaranty is in full force and effect and enforceable in accordance with its terms, and Itel is not in default thereunder; (iii) no rent or other payment under the Lease or the Guaranty has been received by Assignor; and (iv) Assignor has not heretofore assigned or otherwise disposed of or encumbered any of its right, title or interest in, to or under the Lease or the Guaranty or any moneys due or to become due thereunder or by reason thereof or any other moneys subject to this Assignment, and Assignor has full right, power and authority to transfer to Assignee absolute title to Assignor's right, title and interest in, to and under the Lease and the Guaranty and in and to all such moneys.

5. Assignor hereby covenants that it will not, without the prior written consent of Assignee, agree to any modification or amendment of the Lease or the Guaranty or

waive or release any obligation of Lessee under the Lease or of Itel under the Guaranty, or fail promptly and diligently to exercise each and every right which it may have under the Lease and the Guaranty (except the right to terminate the Lease or the Guaranty).

6. Assignor further covenants that it will not, so long as this Assignment shall remain in effect, (i) create or permit to exist any lien, pledge, assignment, charge, encumbrance or security interest on or with respect to any of the rights and interests hereby assigned by it, except in favor of Assignee, or (ii) agree to or permit any payment in advance of the quarterly installments of rent payable under the Lease.

7. It is expressly agreed that, anything herein contained to the contrary notwithstanding, (i) Assignor shall remain liable to perform and observe all of its obligations and agreements under the Lease and the Guaranty, (ii) the obligations and agreements of Assignor under the Lease and the Guaranty may be performed by Assignee or its nominee or agent without releasing Assignor therefrom, and (iii) Assignee shall not have any obligation or liability under the Lease or the Guaranty by reason of, or arising out of, this Assignment or be obligated to perform any of the obligations or agreements of Assignor thereunder or to make any payment or to make any inquiry of the nature or sufficiency of any payment received by Assignor or Assignee or its agent or to present or file any claim or to take any other action to collect or enforce any payment assigned hereunder or to which Assignee may be entitled hereunder at any time or times.

8. Assignor hereby constitutes Assignee and its successors and assigns Assignor's true and lawful attorneys, irrevocably, with full power and authority (in the name of Assignor or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all rent and other moneys and any and all claims for rent and other amounts due and to become due at any time under, or arising out of, the Lease or the Guaranty, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which Assignee may deem to be necessary or advisable in the premises.

9. Assignor agrees that at any time and from time to time, upon the written request of Assignee, Assignor will promptly and duly execute, deliver and record or file any and all such further instruments and documents as Assignee may

reasonably request in order to obtain the full benefits of this Assignment and of the rights and powers herein granted, including, without limitation, the execution, delivery and filing of financing statements under the Uniform Commercial Code in such jurisdictions as Assignee may now or hereafter from time to time request. Assignor hereby also authorizes Assignee to file any such financing statements without the signature of Assignor to the extent permitted by applicable law.

10. All rights, powers and remedies granted to the Assignee hereunder and under the Conditional Sale Agreement shall be cumulative, may be exercised singly or concurrently and shall not be exclusive of any rights or remedies provided by law. This Assignment may not be changed orally and shall be governed by and construed and interpreted in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the undersigned has caused these presents to be properly executed as of the day and year first above written.

FIRST SECURITY BANK OF UTAH, N.A.,  
not in its individual capacity  
but acting solely as trustee  
under a Trust Agreement dated  
as of June 22, 1976 with FMC  
Finance Corporation

By \_\_\_\_\_

[Corporate Seal]

Attest:

\_\_\_\_\_



STATE OF UTAH )  
 : ss.:  
COUNTY OF SALT LAKE)

On this                    day of                    , 1976, before me personally appeared                    , to me personally known, who, being by me duly sworn, says that he is an authorized officer of FIRST SECURITY BANK OF UTAH, N.A., that one of the seals affixed to the foregoing instrument is the seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

Notary Public

[Notarial Seal]

My Commission Expires:

STATE OF CALIFORNIA )  
 : ss.:  
CITY AND COUNTY OF SAN FRANCISCO)

On this                    day of                    , 1976, before me personally appeared                    , to me personally known, who, being by me duly sworn, says that he is the President of SSI RAIL CORP., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

Notary Public

My Commission Expires:

STATE OF CALIFORNIA )  
 : ss.:  
CITY AND COUNTY OF SAN FRANCISCO)

On this                    day of                    , 1976, before me personally appeared                    , to me personally known, who, being by me duly sworn, says that he is the President of ITEL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

Notary Public

My Commission Expires:

ASSIGNMENT OF SUBLEASE

ASSIGNMENT dated as of June 22, 1976 by SSI RAIL CORP., a Delaware corporation (hereinafter called "Assignor"), to FIRST SECURITY BANK OF UTAH, N.A., a national banking association, not in its individual capacity but acting solely as trustee under a Trust Agreement dated as of June 22, 1976 with FMC Finance Corporation (said bank, so acting, being hereinafter called "Assignee").

W I T N E S S E T H :

WHEREAS, FMC Corporation (hereinafter called "Builder") and Assignee have entered into a Conditional Sale Agreement dated as of June 22, 1976, as amended and restated as of July 30, 1976 (said Agreement, as so amended and restated, being hereinafter called the "Conditional Sale Agreement"), providing for the construction, sale and delivery by Builder to Assignee and the purchase by Assignee from Builder of 200 railroad boxcars bearing the identification numbers set forth in Schedule A hereto (said 200 numbered boxcars being hereinafter called the "Equipment"); and

WHEREAS, Assignor and Assignee have entered into a Lease of Railroad Equipment dated as of June 22, 1976, providing for the lease of the Equipment by Assignee to Assignor; and

WHEREAS, Assignor and The Apache Railway Co. (hereinafter called "Sublessee") have entered into a Lease Agreement dated as of June 1, 1976, providing for the initial leasing of 250 railroad boxcars, including the 200 boxcars comprising the Equipment, by Assignor to Sublessee; and

WHEREAS, Builder and Manufacturers Hanover Trust Company (hereinafter called "MHTCo.") are entering into an Agreement and Assignment dated as of July 30, 1976 (hereinafter called the "Agreement and Assignment"), providing for the assignment by Builder to MHTCo. of certain of the rights of Builder under the Conditional Sale Agreement; and

WHEREAS, MHTCO.'s obligation to execute and deliver the Agreement and Assignment and to pay Builder the consideration therefor is conditioned upon, among other things, the execution and delivery by Assignor of this Assignment;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, Assignor does hereby sell, assign, transfer and set over to Assignee and its successors and assigns all the right, title and interest of Assignor in, to and under, and does hereby grant to Assignee and its successors and assigns a security interest in, all of the following:

The Lease Agreement dated as of June 1, 1976 between Assignor and Sublessee (hereinafter called the "Sublease"), as and only to the extent that the Sublease relates to the Equipment, and all rents, issues, profits and proceeds thereof, to the extent that the same are payable with respect to any unit of the Equipment (provided, however, that whenever the amount of any payment due to Assignor under the Sublease is calculated on an aggregate basis for all boxcars subleased thereunder, for the purposes of this Assignment an amount equal to the Assigned Fraction (as hereinafter defined) of each such payment shall be deemed to be payable with respect to the Equipment), including, without limitation, (i) to the extent aforesaid, all moneys due and to become due to Assignor under or in connection with the Sublease, whether as car hire payments (including both straight and incentive per diem), mileage charges or other rental revenues, payments in connection with damage to or destruction of any unit of the Equipment, claims for damages or otherwise, (ii) all rights and powers of Assignor under the Sublease to exercise any option, to consent or make any waiver or agreement or to take any other action with respect to any unit of the Equipment, and (iii) all rights and claims of Assignor to insurance proceeds with respect to any unit of the Equipment (all of the foregoing being herein collectively called the "Collateral"). The term "Assigned Fraction" as used herein shall mean a fraction the numerator of which shall be the number of boxcars comprising the Equipment and the denominator of which shall be the aggregate number of boxcars at the time leased under the Sublease.

1. This Assignment is given as collateral security for the payment by Assignor to Assignee of all amounts payable by Assignor under the Lease and the performance by Assignor of all of its obligations contained therein (all of such amounts and obligations being herein collectively called the "Obligations").

2. Assignor hereby irrevocably authorizes Assignee, at Assignee's discretion upon the occurrence of an Event of Default under the Lease, to direct Sublessee during the continuance of such Event of Default to pay all rent and all other amounts due or to become due under or in connection with the Sublease, to the extent assigned by Assignor hereunder, directly to Assignee or to such other person as Assignee may from time to time designate in writing. If, after any such direction shall have been given by Assignee to Sublessee, Assignor shall receive during the continuance of such Event of Default any such payments under or in connection with the Sublease or otherwise assigned hereunder, such payments shall be held by Assignor in trust for Assignee, shall be segregated from other funds of Assignor and shall, forthwith upon receipt by Assignor, be turned over to Assignee or its agent in the same form as received by Assignor (except for the endorsement of Assignor when required).

3. All moneys received by Assignee by reason of this Assignment (whether from Sublessee, Assignor or otherwise) shall be held by Assignee and applied to the payment of the Obligations as and when they become due and payable, whether by maturity, prepayment, acceleration or otherwise; provided, however, that so long as no Event of Default under the Lease, or event which with notice or lapse of time or both would constitute such an Event of Default, has occurred and is continuing, any moneys so received by Assignee shall be paid over to Assignor, free of this Assignment, not later than one business day after receipt thereof by Assignee, by transfer of funds immediately available to Assignor. Upon the occurrence of an Event of Default under the Lease, Assignee shall have all of the rights and remedies of a secured party under the Uniform Commercial Code of the State of Utah.

4. Assignor hereby represents and warrants to Assignee that (i) the Sublease is in full force and effect and enforceable against Sublessee in accordance with its terms, and neither Assignor nor Sublessee is in default thereunder; (ii) Assignor has not heretofore assigned or otherwise disposed of or encumbered any of its right, title or interest in, to or under the Sublease or any moneys due or to become due thereunder or by reason thereof or any other moneys subject to this Assignment; and (iii) Assignor has full right, power and authority to transfer to Assignee absolute title to Assignor's right, title and interest in, to and under the Sublease and in and to all such moneys, as and to the extent hereby assigned by it.

5. Assignor hereby covenants that it will not, without the prior written consent of Assignee, amend, modify or otherwise change any term of the Sublease and that it will not take any other action in connection therewith that would have the effect of impairing the value of Assignee's interest therein or rights thereunder.

6. Assignor further covenants that it will not, so long as this Assignment shall remain in effect, create or permit to exist any lien, pledge, assignment, charge, encumbrance or security interest on or with respect to any of the rights and interests hereby assigned by it, except in favor of Assignee, its successors or assigns.

7. It is expressly agreed that, anything herein contained to the contrary notwithstanding, (i) Assignor shall remain liable to perform and observe all of its obligations and agreements under the Sublease, (ii) the obligations and agreements of Assignor under the Sublease may be performed by Assignee or its nominee or agent without releasing Assignor therefrom, and (iii) Assignee shall not have any obligation or liability under the Sublease by reason of, or arising out of, this Assignment or be obligated to perform any of the obligations or agreements of Assignor thereunder or to make any payment or to make any inquiry of the nature or sufficiency of any payment received by Assignor or Assignee or its agent or to present or file any claim or to take any other action to collect or enforce any payment assigned hereunder or to which Assignee may be entitled hereunder at any time or times.

8. Assignor hereby, but effective only upon the occurrence of an Event of Default under the Lease, constitutes Assignee and its successors and assigns Assignor's true and lawful attorneys, irrevocably, with full power and authority (in the name of Assignor or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all rent and other moneys and any and all claims for rent and other amounts due and to become due at any time under, or arising out of, the Sublease, to the extent that the same are assigned by Assignor hereunder, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which Assignee may deem to be necessary or advisable in the premises.

9. Assignor agrees that at any time and from time to time, upon the written request of Assignee, Assignor will promptly and duly execute, deliver and record or file any and all such further instruments and documents as Assignee may reasonably request in order to obtain the full benefits of this Assignment and of the rights and powers herein granted, including, without limitation, the execution, delivery and filing of financing statements under the Uniform Commercial Code in such jurisdictions as Assignee may now or hereafter from time to time request. Assignor hereby also authorizes Assignee to file any such financing statements without the signature of Assignor to the extent permitted by applicable law.

10. All rights, powers and remedies granted to Assignee hereunder and under the Lease shall be cumulative, may be exercised singly or concurrently and shall not be exclusive of any rights or remedies provided by law. This Assignment may not be changed orally and shall be governed by and construed and interpreted in accordance with the laws of the State of Utah.

11. Although for convenience this Assignment is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the undersigned has caused these presents to be properly executed as of the day and year first above written.

SSI RAIL CORP.

By \_\_\_\_\_

[Corporate Seal]

Attest:

\_\_\_\_\_

SCHEDULE A TO ASSIGNMENT OF SUBLEASE

<u>Type</u>	<u>Quantity</u>	<u>Assignor's or Sublessee's Road Numbers (Both Inclusive)</u>
70-ton box cars (FMC Corporation Specification #17774, revision #3 dated June 9, 1976)	100	APA 1850-1949 *
100-ton box cars (FMC Corporation Specification #17775)	100	APA 1700-1799 *

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\* Road Number of The Apache Railway Co.



STATE OF CALIFORNIA )  
 )  
 ) ss.:  
CITY AND COUNTY OF SAN FRANCISCO )

On this                day of                , 1976,  
before me personally appeared                ,  
to me personally known, who, being by me duly sworn,  
says that he is the President of SSI RAIL CORP., that  
one of the seals affixed to the foregoing instrument is  
the seal of said corporation, that said instrument was  
signed and sealed on behalf of said corporation by  
authority of its Board of Directors, and he acknowledged  
that the execution of the foregoing instrument was the  
free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission Expires:

## 1

Dated: August , 1976

[Corporate Seal]

By \_\_\_\_\_

\_\_\_\_\_

STATE OF ARIZONA

)

: ss.:

COUNTY OF

)

On this                      day of                      , 1976,  
before me personally appeared                      ,  
to me personally known, who, being by me duly sworn, says  
that he is the President of THE APACHE RAILWAY CO., that  
one of the seals affixed to the foregoing instrument is  
the corporate seal of said corporation, that said instru-  
ment was signed and sealed on behalf of said corporation  
by authority of its Board of Directors, and he acknowl-  
edged that the execution of the foregoing instrument was  
the free act and deed of said corporation.

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Notary Public

[Notarial Seal]

My Commission Expires:

SUBSEQUENT ASSIGNMENT OF SUBLEASE

ASSIGNMENT dated as of July 30, 1976 by FIRST SECURITY BANK OF UTAH, N.A., a national banking association, not in its individual capacity but acting solely as trustee under a Trust Agreement dated as of June 22, 1976 with FMC Finance Corporation (said bank, so acting, being hereinafter called "Assignor"), to MANUFACTURERS HANOVER TRUST COMPANY, a New York banking corporation (hereinafter called "Assignee").

W I T N E S S E T H :

WHEREAS, FMC Corporation (hereinafter called "Builder") and Assignor have entered into a Conditional Sale Agreement dated as of June 22, 1976, as amended and restated as of the date hereof (said Agreement, as so amended and restated, being hereinafter called the "Conditional Sale Agreement"), providing for the construction, sale and delivery by Builder to Assignor and the purchase by Assignor from Builder of 200 railroad boxcars (hereinafter called the "Equipment"); and

WHEREAS, Assignor and SSI Rail Corp. (hereinafter called "Lessee") have entered into a Lease of Railroad Equipment dated as of June 22, 1976 (hereinafter called the "Lease"); providing for the lease of the Equipment by Assignor to Lessee; and

WHEREAS, Lessee and The Apache Railway Co. (hereinafter called "Sublessee") have entered into a Lease Agreement dated as of June 1, 1976 (hereinafter called the "Sublease"), providing for the initial leasing of 250 railroad boxcars, including the 200 boxcars comprising the Equipment, by Lessee to Sublessee; and

WHEREAS, Lessee has entered into an Assignment of Sublease dated as of June 22, 1976 (hereinafter called the "Assignment of Sublease"), providing for the assignment by Lessee to Assignor of certain of the rights of Lessee under the Sublease; and

WHEREAS, Builder and Assignee are entering into an Agreement and Assignment of even date herewith (hereinafter called the "Agreement and Assignment"), providing for the assignment by Builder to Assignee of certain of the rights of Builder under the Conditional Sale Agreement; and

WHEREAS, Assignee's obligation to execute and deliver the Agreement and Assignment and to pay Builder the consideration therefor is conditioned upon, among other things, the execution and delivery by Assignor of this Assignment;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt of which is hereby acknowledged, Assignor does hereby sell, assign, transfer and set over to Assignee and its successors and assigns all the right, title and interest of Assignor in, to and under, and does hereby grant to Assignee and its successors and assigns a security interest in, (i) the Assignment of Sublease and (ii) the Collateral (as defined in the Assignment of Sublease).

1. This Assignment is given as collateral security for the payment by Assignor to Assignee of the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) together with interest thereon and all other amounts payable by Assignor under the Conditional Sale Agreement and the performance by Assignor of all of its obligations contained therein (all of such amounts and obligations being herein collectively called the "Obligations"), and all moneys received by Assignee pursuant to the terms of this Assignment (whether from Sublessee, Assignor, Lessee or otherwise) shall be applied to the payment of the Obligations as and when they become due and payable, whether by maturity, prepayment, acceleration or otherwise.

2. Assignor hereby irrevocably authorizes Assignee, at Assignee's discretion and upon the occurrence of an Event of Default under the Lease, to direct Sublessee during the continuance of such Event of Default to pay all rent and all other amounts due or to become due under or in connection with the Sublease, to the extent assigned by Lessee under the Assignment of Sublease, directly to Assignee or to such other person as Assignee may from time to time designate in writing.

3. Assignor hereby represents and warrants to Assignee that (i) Assignor has not heretofore assigned or otherwise disposed of or encumbered any of its right, title or interest in, to or under the Assignment of Sublease or any moneys due or to become due thereunder or by reason thereof; and (ii) Assignor has full right, power and authority

to transfer to Assignee absolute title to Assignor's right, title and interest in, to and under the Assignment of Sublease and in and to all such moneys.

4. Assignor hereby covenants that it will not, without the prior written consent of Assignee, amend, modify or otherwise change any term of the Assignment of Sublease.

5. Assignor further covenants that it will not, so long as this Assignment shall remain in effect, create or permit to exist any lien, pledge, assignment, charge, encumbrance or security interest on or with respect to any of the rights and interests hereby assigned by it, except in favor of Assignee, its successors or assigns.

6. Assignor hereby, but effective only upon the occurrence of a Default under the Conditional Sale Agreement, constitutes Assignee and its successors and assigns Assignor's true and lawful attorneys, irrevocably, with full power and authority (in the name of the Assignor or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all moneys and any and all claims for moneys due and to become due at any time under, or arising out of, the Assignment of Sublease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which Assignee may deem to be necessary or advisable in the premises.

7. Assignor agrees that at any time and from time to time, upon the written request of Assignee, Assignor will promptly and duly execute, deliver and record or file any and all such further instruments and documents as Assignor may reasonably request in order to obtain the full benefits of this Assignment and of the rights and powers herein granted, including, without limitation, the execution, delivery and filing of financing statements under the Uniform Commercial Code in such jurisdictions as Assignee may now or hereafter from time to time request. Assignor hereby also authorizes Assignee to file any such financing statements without the signature of Assignor to the extent permitted by applicable law.

8. All rights, powers and remedies granted to Assignee hereunder and under the Conditional Sale Agreement shall be cumulative, may be exercised singly or concurrently

and shall not be exclusive of any rights or remedies provided by law. This Assignment may not be changed orally and shall be governed by and construed and interpreted in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the undersigned has caused these presents to be properly executed as of the day and year first above written.

FIRST SECURITY BANK OF UTAH, N.A.,  
not in its individual capacity  
but acting solely as trustee  
under a Trust Agreement dated  
as of June 22, 1976 with FMC  
Finance Corporation

[Corporate Seal]

By \_\_\_\_\_

Attest:

\_\_\_\_\_

STATE OF UTAH )  
 : SS.:  
COUNTY OF SALT LAKE)

On this                      day of                      , 1976, before me personally appeared                      , to me personally known, who, being by me duly sworn, says that he is an authorized officer of FIRST SECURITY BANK OF UTAH, N.A., that one of the seals affixed to the foregoing instrument is the seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

Notary Public

[Notarial Seal]

My Commission Expires:



CONSENTS TO SUBSEQUENT ASSIGNMENT OF SUBLEASE

The undersigned, SSI RAIL CORP., hereby acknowledges notice of and consents to the foregoing Subsequent Assignment of Sublease and agrees that if, during the continuance of an Event of Default under the Lease referred to in said Assignment, it shall receive any payments under or in connection with the Sublease referred to in said Assignment or any moneys otherwise assigned thereunder, such payments shall be held by it in trust for Assignee, shall be segregated from its other funds and shall, forthwith upon receipt by it, be turned over to Assignee or an agent thereof in the same form as received by it (except for its endorsement when required), and further agrees that it will not seek to recover from said Assignee for any reason whatsoever any moneys paid to it by virtue of said Assignment and this Consent.

Dated: July 30, 1976

[Corporate Seal]

SSI RAIL CORP.

Attest:

By \_\_\_\_\_

\_\_\_\_\_  
The undersigned, THE APACHE RAILWAY CO., hereby acknowledges notice of and consents to the foregoing Subsequent Assignment of Sublease and agrees that (1) upon being directed so to do by the Assignee thereunder, it will make payment of all moneys due and to become due from it under or in connection with the Sublease referred to in said Assignment, as and to the extent that such moneys are assigned thereby, directly to said Assignee or to such other person as said Assignee may from time to time designate to the undersigned in writing, and (2) each such payment shall be final, and the undersigned will not seek to recover from said Assignee for any reason whatsoever any moneys paid to it by virtue of said Assignment and this Consent.

Dated: August , 1976

THE APACHE RAILWAY CO.

[Corporate Seal]

By \_\_\_\_\_

Attest:

STATE OF CALIFORNIA )  
 )  
 ) ss.:  
CITY AND COUNTY OF SAN FRANCISCO )

On this            day of            , 1976, before me personally appeared            , to me personally known, who, being by me duly sworn, says that he is the President of SSI RAIL CORP., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

My Commission Expires:

STATE OF ARIZONA                    )  
  :    **SS.:**  
COUNTY OF                            )

On this                      day of                      , 1976, before me personally appeared                      , to me personally known, who, being by me duly sworn, says that he is the President of THE APACHE RAILWAY CO., that one of the seals affixed to the foregoing instrument, is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

My Commission Expires: